

# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

## VOLUNTARY CLEANUP AGREEMENT

### INTRODUCTION

This Agreement is entered into voluntarily by \_\_\_\_\_ and the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC). This Agreement is not and shall not be construed as an admission of any liability under the Texas Solid Waste Disposal Act or any other law or as a waiver of any defense to such liability. No approval hereunder or receipt of funds hereby shall be taken as a warranty as to sufficiency or efficacy of the response action. The purpose of this agreement is to detail the obligations and functions of each party, related to the voluntary cleanup process at the \_\_\_\_\_ (site), Voluntary Cleanup Program (VCP) number \_\_\_\_\_.

The activities conducted by the applicant under this Agreement are subject to approval by TNRCC. The activities conducted by the applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices.

### STATEMENT OF ELIGIBILITY

The Executive Director has determined that the application submitted by the applicant is complete and that the applicant is eligible to participate in the VCP established under Subchapter S of Chapter 361 of the Health and Safety Code (HSC). If the agency determines that the applicant withheld or misrepresented information that would be relevant to the applicant's eligibility, the Executive Director may exercise his right to withdraw from this Agreement.

### PARTIES BOUND

This Agreement shall apply to and be binding upon the applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries, and assigns and upon the TNRCC, its employees, agents and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the applicant shall in any way alter its status or responsibilities under this agreement unless applicant or TNRCC withdraws from this Agreement.

The applicant shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The applicant shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement or within 14 days of the date of retaining their services.

## DEFINITIONS

"Site" means the area described in the VCP application, attached and incorporated herein as Exhibit "A".

## ADDRESSES FOR ALL CORRESPONDENCE

Documents, including reports, approvals, notifications, disapprovals, and other correspondence to be submitted under this Agreement, may be sent by certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the applicant or TNRCC may designate in writing.

Documents to be submitted to TNRCC should be sent to:

### Mailing Address

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Project Manager  
Voluntary Cleanup Section  
MC 221  
P.O. Box 13087  
Austin, TX 78711-3087

### Physical Address

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Project Manager  
Voluntary Cleanup Section  
MC 221  
12100 Park 35 Circle  
Austin, TX 78753

Documents to be submitted to the applicant should be sent to:  
(provides this information)

(phone number)

## COMPLIANCE WITH APPLICABLE LAWS

All work undertaken by the applicant pursuant to this Agreement shall be performed in compliance with all applicable federal, state and local laws, ordinances and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation and Resource Conservation and Recovery Act regulations. In the event of a conflict in the application of federal, state, or local laws, ordinances and regulations, the applicant shall comply with the more/most stringent such laws, ordinances, or regulations, unless provided otherwise in writing by TNRCC. Federal requirements shall be followed if they are the more/most stringent. However, as provided by HSC, Section 361.611 a state or local permit shall not be required, although the applicant must coordinate with ongoing federal and state hazardous waste programs and must comply with the

substantive requirements of an otherwise required state permit. Where it is determined that a permit is required under federal law, the applicant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The applicant shall be responsible for obtaining all federal permits which are necessary for the performance of any work hereunder.

#### APPLICABLE RULES AND REGULATIONS

The VCP rules, 30 Texas Administrative Code (TAC) 333, and the following rules or regulations are specifically designated as being directly applicable for the site and must be followed. Citation of these rules does not imply that they are the only applicable rules.

- \_\_\_ 30 TAC 334 (Petroleum Storage Tank Rules)
- \_\_\_ 30 TAC 335 (Industrial Solid Waste & Municipal Hazardous Waste Rules, i.e., Risk Reduction Rules)
- \_\_\_ Other\_\_\_\_\_

#### SUBMITTALS AND SCHEDULES

In compliance with the aforementioned rules or regulations, the required submittals shall include a monthly status report, which details activities completed for the current month and those planned for the upcoming month, along with the following:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

The schedule for submittals shall be as follows:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Proposed future land use to be achieved:

- \_\_\_ residential (i.e., unrestricted)
- \_\_\_ non-residential (i.e., commercial/industrial)
- \_\_\_ other (e.g., agricultural or recreational)\_\_\_\_\_

#### DESIGNATED PROJECT MANAGER

On or before the effective date of this Agreement, the TNRCC and the applicant shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The TNRCC project manager will be the TNRCC designated representative at the site. To the maximum extent possible, communications between the applicant and TNRCC and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the project managers shall, whenever

possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each party has the right to change its respective project manager by notifying the other party in writing at least five (5) days prior to the change.

## ACCESS

To the extent that the site or other areas where work is to be performed hereunder is presently owned or controlled by parties other than those bound by this Agreement, the applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from applicant to the present owner of such property requesting access agreements to permit applicant, TNRCC and their authorized representatives access to such property. Any such access agreements shall be incorporated by reference into this Agreement. Such agreements shall provide access for TNRCC and authorized representatives of TNRCC, as specified below. In the event that such access agreements are not obtained, the applicant shall so notify TNRCC, which may then, at its discretion, assist the applicant in gaining access.

The applicant shall provide authorized representatives of TNRCC access to the site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the site and shall include, but not be limited to: inspecting records, operating logs and contracts related to the site; reviewing the progress of the applicant in carrying out the terms of this agreement; conducting such tests, inspections, and sampling as TNRCC may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and, verifying the data submitted to TNRCC by the applicant hereunder. The applicant shall permit TNRCC's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the applicant exercises control. All persons with access to the site pursuant to this Agreement shall comply with submitted health and safety plans. The TNRCC does not approve health and safety plans.

## DISPUTE RESOLUTION

This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted. It should be noted, that as provided for in HSC, Section 361.607, the executive director or the applicant in its sole discretion may terminate the Agreement by giving 15 days advance written notice to the other.

The parties shall use their best effort to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement which the parties are unable to resolve informally, the applicant may present written notice of such dispute to TNRCC and set forth specific points of dispute and the position of the applicant. This written notice shall be submitted no later than five (5) calendar days after the applicant discovers the project managers are unable to resolve the dispute. The applicant's project manager shall notify the TNRCC's project manager

immediately by phone or other appropriate methods of communication prior to written notice, when he/she believes the parties are unable to resolve a dispute.

Within ten (10) days of receipt of such a written notice, the TNRCC shall provide a written response to the applicant setting forth its position and the basis therefore. During the five (5) calendar days following the receipt of the response, the parties shall attempt to negotiate in good faith a resolution of their differences. If during this negotiation period, the TNRCC concurs with the position of the applicant, the applicant shall be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

Following the expiration of the previously described time periods, if no resolution of the disputed issue(s) has been reached the Executive Director or their designee, shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement, and shall provide written documentation of such determination to the applicant.

At this juncture, if dispute resolution fails, and either or both parties exercise their right to withdraw from the Agreement by giving 15 days advance written notice to the other, only those costs incurred or obligated by the TNRCC before notice of termination of the Agreement are recoverable under the Agreement.

#### RESERVATION OF RIGHTS

TNRCC and applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the parties may have against any person, firm, partnership or corporation, not a party to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants or pollutants at, to or from the site. The parties to this agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not parties to this Agreement, and as to each other for matters not covered hereby.

The applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than TNRCC found to be responsible or liable for contribution, indemnity or otherwise for any amounts which have been or will be expended by the applicant in connection with the site.

During the term of this agreement, TNRCC will not bring an enforcement action against applicant for any violations of statutes or regulations for the specific violations or releases that are being remediated by this Agreement, unless the applicant withdraws from this Agreement prior to

completion of the cleanup. However, a responsible party remains liable for contamination it caused, should cleanup standards change or additional contamination be discovered. Non-responsible party applicants have a release from liability upon issuance of the Certificate of Completion subject to statutory conditions in Section 361.610(b) HSC.

#### ADMINISTRATIVE COSTS

Applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TNRCC for all of its costs associated with implementation of this Agreement. These costs may include direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs associated with the review of the applicant's work plans and reports, and oversight of field activities.

TNRCC will track all costs to the TNRCC for review and oversight activities related to the site and provide quarterly invoices to the person responsible, per this agreement for said costs. If TNRCC costs are less than the application fee of one thousand (\$1,000) dollars, the remaining balance in the site account will not be refunded. The applicant shall pay these invoiced costs to the TNRCC within 30 days after the date the applicant receives notice that these costs are due and owing. If payment is not made within thirty days, the TNRCC shall request that the attorney general bring action to recover all costs allowed by law.

Checks shall be made payable to the Texas Natural Resource Conservation Commission and be mailed along with a transmittal letter stating the site name, VCP number, and addressed to the Texas Natural Resource Conservation Commission; MC-214; Attention: Cashier; P.O. Box 13088, Austin, Texas, 78711-3088.

In the event that this Agreement is terminated for any reason, applicant A, unless indicated otherwise in Exhibit "A", agrees to reimburse TNRCC for all costs incurred or obligated by the TNRCC before notice of termination of the Agreement.

#### NOTICE OF BANKRUPTCY

As soon as applicant has knowledge of its intention to file bankruptcy or no later than 7 days prior to the actual filing of a voluntary bankruptcy petition, applicant shall notify TNRCC of its intention to file a bankruptcy petition. In the case of an involuntary bankruptcy petition, applicant shall give notice to the TNRCC as soon as it acquires knowledge of such petition.

#### INDEMNIFICATION

The applicant agrees to indemnify and save and hold the State of Texas, its agencies, successors, departments, agents, and employees, harmless from any and all claims, damages, or causes of action arising from, or on account of, the negligent acts or omissions of the applicant, its officers, directors, principals, employees, receivers, trustees, agents, successors, subsidiaries, and assigns in carrying out the activities pursuant to this Agreement.

#### EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Agreement shall be the date on which this Agreement is signed by the Executive Director of TNRCC or his authorized representative.

This Agreement may be amended by mutual agreement of TNRCC and the applicant. Amendments shall be in writing and shall be effective when signed by the Executive Director of TNRCC or his authorized representative.

#### TERMINATION AND SATISFACTION

The provisions of the Agreement shall be satisfied when TNRCC gives the applicant written notice in the form of a Final Certificate of Completion that the applicant has demonstrated to TNRCC's satisfaction that all terms of this Agreement have been completed, including the selection and implementation of a remedial action, when appropriate.

Nothing in the Agreement shall restrict the State of Texas from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this site not remediated in accordance with this Agreement.

#### SIGNATURES

Applicant A

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant B

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant C

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant D

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

TNRCC Representative

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Title: \_\_\_\_\_



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### ADDITIONAL APPLICANTS FORM

Applicant E

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant F

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant G

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_

Applicant H

By: \_\_\_\_\_  
(signature of authorized  
representative)

Name: \_\_\_\_\_  
(print or type)

Date: \_\_\_\_\_